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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM PACK, derivatively on behalf
of ROCKET FUEL INC.,

Plaintiff,

v.

GEORGE H. JOHN, ABHINAV GUPTA,
J. PETER BARDWICK, SUSAN L.
BOSTROM, RONALD E.F. CODD,
WILLIAM ERICSON, RICHARD
FRANKEL, JOHN GARDNER, CLARK
KOKICH, RANDY WOOTTON, and
MONTE ZWEBEN,

Defendants,

-and-

ROCKET FUEL INC., a Delaware
Corporation,

Nominal Defendant.

Case No.:

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

DEMAND FOR JURY TRIAL

By and through his undersigned counsel, Plaintiff William Pack (“Plaintiff”) brings this shareholder derivative action on behalf of Rocket Fuel Inc. (“Rocket Fuel” or the “Company”) and against certain current and former officers and directors of the Company for breaches of fiduciary duties, unjust enrichment, corporate waste, insider trading, and aiding and abetting thereof. Plaintiff makes these allegations upon personal knowledge as to those allegations concerning Plaintiff and, as to all other matters, upon the investigation of counsel, which includes, without limitation: (a) review and analysis of public filings made by Rocket Fuel and other related parties and non-parties with the U.S. Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and other publications disseminated by certain of the defendants and other related non-parties; (c) review of news articles, shareholder communications, and postings on Rocket Fuel’s website concerning the Company’s public statements; (d) review of the pleadings and other documents in the consolidated federal shareholder class action entitled *In Re Rocket Fuel, Inc. Securities Litigation*, Case No. 4:14-cv-03998-PJH (N.D. Cal.) (the “Securities Class Action”); and (e) review of other publicly available information concerning Rocket Fuel and the Individual Defendants (defined below).

INTRODUCTION

1. Rocket Fuel is a technology company that has developed a predictive modeling and automated decision-making platform based on Artificial Intelligence (“AI”). The Company’s media buying technology platform uses AI to determine how to purchase advertising to optimize returns on investment.

2. Between at least September 20, 2013 and the present (the “Relevant Period”), the Individual Defendants failed to disclose material facts, and either made, caused to be made, and/or failed to correct statements concerning Rocket Fuel’s business, operations, prospects, internal controls, and financials, causing the Company’s stock to trade at artificially inflated prices. Specifically, during the Relevant Period, the Individual Defendants caused Rocket Fuel to make materially inaccurate financial guidance and failed to disclose that: (a) Rocket Fuel was unable to adequately identify and eliminate fraudulent “bot traffic” used

1 to artificially increase advertising views; (b) the Company knew of the substantial negative
2 impact that this bot traffic was having on the market; (c) by overstating Rocket Fuel's ability
3 to block bot traffic, the Company was incurring material risks to its financial projections and
4 outlook, including from the loss of customers; and (d) as a result, Rocket Fuel's financial
5 projections and overall Company outlook during the Relevant Period were materially false
6 and misleading at all relevant times.

7 3. Before and during the Relevant Period, the Individual Defendants caused
8 Rocket Fuel to offer periodic positive assessments of the Company's performance and
9 financial outlook, including statements regarding the capability of Rocket Fuel's proprietary
10 technology to eliminate threats, which would lead to happy customers and positive economic
11 returns.

12 4. For example, on November 6, 2013, the Individual Defendants caused Rocket
13 Fuel to post on its website: "Rocket Fuel undermines fraudulent practices and *makes sure con*
14 *artists always leave empty handed*. Using the same powerful technology that optimizes our
15 clients' campaigns, *Rocket Fuel is able to identify and eliminate all threats* before serving a
16 single ad."

17 5. On August 5, 2014, however, the Individual Defendants caused Rocket Fuel to
18 issue a press release announcing that the Company had significantly lowered its guidance for
19 2014 to between \$385 million and \$405 million, sharply lower than the previously announced
20 guidance between \$420 million and \$435 million. On a conference call with investors on
21 August 6, 2014, Defendant George John ("John"), the Company's Chief Executive Officer
22 ("CEO"), stated: "[W]e were surprised by the strength of trends in passing our bookings in
23 June and we now feel our full year guidance should take into account slightly lower sales
24 productivity" based on factors including "buzz this summer about bot traffic and low quality
25 ad space on digital exchanges."

26 6. When one analyst on the call questioned "the industry concern around [bot]
27 traffic, because it seems like the lack of ROI [return on investment] from bot driven traffic
28 should already be well reflected in the price," John responded: "[F]rom the customer

1 perspective is I think a phenomenon in the industry, but hasn't been well understood I think
2 by a lot of advertisers.”

3 7. John's response was contradicted by those familiar with the truth in the
4 industry, such as the *Wall Street Journal*, which reported on August 12, 2014 that the “online
5 ad industry has been well aware of its fraud problem for years.”

6 8. As a result of the Individual Defendants' misconduct, Rocket Fuel common
7 stock had traded at artificially inflated levels during the Relevant Period. When the truth was
8 revealed, the Company's share price plunged. On August 6, 2014, the Company's stock
9 declined approximately 30% in a single day, dropping from \$24.75 to \$17.05, and erasing
10 hundreds of millions of dollars in market capitalization.

11 9. However, before the truth regarding the Company's financial and business
12 outlook and projections was revealed, certain of the Individual Defendants successfully took
13 advantage of the Company's bloated stock price by selling millions of dollars in personally
14 held stock.

15 10. Further, before the August 5, 2014 disclosures, the Company's insiders also
16 cashed out through a secondary public offering issued in February 2014, with prices as high
17 as \$61 per share. In order to additionally ensure their own profits at the expense of the
18 Company's other shareholders, the Company's insiders also obtained an early release from
19 the IPO lock-up agreement, allowing them to sell their shares in February 2014 instead of
20 having to wait until March 2014.

21 11. The Rocket Fuel Board of Directors (“Board”) has not, and will not,
22 commence litigation against the Individual Defendants, let alone vigorously prosecute such
23 claims, because they face a substantial likelihood of liability to Rocket Fuel for, among other
24 things, authorizing or failing to correct the false and misleading statements alleged herein.
25 Accordingly, a pre-suit demand upon the Board is a useless and futile act. Thus, Plaintiff
26 rightfully brings this action to vindicate Rocket Fuel's rights against its wayward fiduciaries
27 and hold them responsible for the damages they have caused to the Company.
28

JURISDICTION AND VENUE

12. The Court has jurisdiction over all claims under 28 U.S.C. §1332 because there is complete diversity among the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

13. The Court has jurisdiction over each defendant because each defendant is either a corporation that does sufficient business in California, or is an individual who has sufficient minimum contacts with California so as to render the exercise of jurisdiction by the California courts permissible under traditional notions of fair play and substantial justice.

14. Venue is proper in this District pursuant to 28 U.S.C. §1391 because one or more of the defendants either resides in or maintains executive offices in this District, including Nominal Defendant Rocket Fuel. Also a substantial portion of the transactions and wrongs complained of herein – including the Individual Defendants’ participation in the wrongful acts detailed herein and aiding and abetting in violations of fiduciary duties owed to Rocket Fuel – occurred in this District, and the Individual Defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

THE PARTIES

15. Plaintiff William Pack, a resident and citizen of Texas, is a current shareholder of Rocket Fuel. Plaintiff has continuously held shares of Rocket Fuel stock since on or about September 21, 2013 and at all times during the Relevant Period.

16. Nominal Defendant Rocket Fuel is incorporated in Delaware and trades on the NASDAQ Stock Market under the ticker symbol “FUEL.” The Company’s headquarters are located at 1900 Seaport Boulevard, Redwood City, California 94063. As of September 30, 2015, the Company has approximately 43 million shares of stock outstanding.

17. Defendant John was the CEO of the Company from May 2008 to March 2015, the Chairman of the Board from February 2013 to November 2015, and was a member of the Company’s Board from March 2008 until November 12, 2015. John was also a co-founder of

1 the Company. John is a defendant in the Securities Class Action. John received total
2 compensation from Rocket Fuel of \$1,906,097 in 2013 and \$4,880,202 in 2014. In addition,
3 according to a Form 8-K filed on November 17, 2015, John executed a separation agreement
4 with the Company on November 11, 2015, pursuant to which John will receive severance
5 payments totaling \$191,850. Further, during the Relevant Period, John misappropriated
6 Company non-public information by selling 307,877 personally held shares of Rocket Fuel
7 stock at artificially inflated prices, for proceeds of approximately \$17,935,374.64. Upon
8 information and belief, Defendant John is a citizen of California.

9 18. Defendant Abhinav Gupta (“Gupta”) has been employed by the Company as
10 Vice President of Engineering since 2008, and was also a co-founder of the Company. Gupta
11 received total compensation from Rocket Fuel of \$1,066,538 in 2013. During the Relevant
12 Period, Gupta misappropriated Company non-public information by selling 186,855
13 personally held shares of Rocket Fuel stock at artificially inflated prices, for proceeds of
14 approximately \$10,885,238. Upon information and belief, Defendant Gupta is a citizen of
15 California.

16 19. Defendant J. Peter Bardwick (“Bardwick”) was the Chief Financial Officer
17 (“CFO”) of the Company from September 2011 to September 2014. Bardwick is a defendant
18 in the Securities Class Action. On October 1, 2014, the Company executed a consulting
19 agreement with Bardwick, pursuant to which he continues to provide services to the
20 Company. During the Relevant Period, Bardwick misappropriated Company non-public
21 information by selling 17,500 personally held shares of Rocket Fuel stock at artificially
22 inflated prices, for proceeds of approximately \$1,019,462.50. Upon information and belief,
23 Defendant Bardwick is a citizen of California.

24 20. Defendant Susan L. Bostrom (“Bostrom”) has served as a member of the
25 Company’s Board since February 2013. Bostrom is a defendant in the Securities Class
26 Action. Bostrom is a member of the Compensation Committee. Bostrom received total
27 compensation from Rocket Fuel of \$946,208 in 2013 and \$184,993 in 2014. Upon
28 information and belief, Defendant Bostrom is a citizen of California.

1 21. Defendant Ronald E.F. Codd (“Codd”) has served as a member of the
2 Company’s Board since February 2012. Codd is a defendant in the Securities Class Action.
3 Codd is a member of the Audit Committee and the Nominating and Governance Committee.
4 Codd received total compensation from Rocket Fuel of \$122,955 in 2013 and \$192,993 in
5 2014. Upon information and belief, Defendant Codd is a citizen of California.

6 22. Defendant William Ericson (“Ericson”) has been a member of the Company’s
7 Board since May 2008. Ericson is a defendant in the Securities Class Action. Ericson is a
8 member of the Compensation Committee and the Nominating and Governance Committee.
9 Ericson received total compensation from Rocket Fuel of \$120,977 in 2013 and \$185,993
10 in 2014. As of April 15, 2015, Ericson held over 22% of the Company’s stock shares.
11 Further, during the Relevant Period, Ericson misappropriated Company non-public
12 information by selling 1,656,776 personally held shares of Rocket Fuel stock at artificially
13 inflated prices, for proceeds of approximately \$101,063,336.00. Upon information and belief,
14 Defendant Ericson is a citizen of California.

15 23. Defendant Richard Frankel (“Frankel”) has been the Company’s Executive
16 Vice President since October 2015. Frankel was the Company’s President from May 2008 to
17 October 2015, the CFO from March 2008 to February 2009, and has been a member of the
18 Company’s Board since March 2008. Frankel was also a co-founder of the Company.
19 Frankel is a defendant in the Securities Class Action. Ericson is a member of the
20 Compensation Committee and the Nominating and Governance Committee. Frankel received
21 total compensation from Rocket Fuel of \$1,498,988 in 2013 and \$2,923,397 in 2014. Further,
22 during the Relevant Period, Frankel misappropriated Company non-public information by
23 selling 254,323 personally held shares of Rocket Fuel stock at artificially inflated prices, for
24 proceeds of approximately \$14,815,586.37. Upon information and belief, Defendant Frankel
25 is a citizen of California.

26 24. Defendant John Gardner (“Gardner”) has been a member of the Company’s
27 Board since July 2011. Gardner is a defendant in the Securities Class Action. Gardner
28 received total compensation from Rocket Fuel of \$119,988 in 2013 and \$182,493 in 2014.

1 Gardner was a member of the Audit Committee until 2015. Further, during the Relevant
2 Period, Frankel misappropriated Company non-public information by selling 407,693
3 personally held shares of Rocket Fuel stock at artificially inflated prices, for proceeds of
4 approximately \$23,750,155.72. Upon information and belief, Defendant Gardner is a citizen
5 of California.

6 25. Defendant Clark Kokich (“Kokich”) has been a member of the Company’s
7 Board since April 2011. Kokich is a defendant in the Securities Class Action. Kokich is a
8 member of the Audit Committee and the Nominating and Governance Committee. Kokich
9 received total compensation from Rocket Fuel of \$125,075 in 2013 and \$200,493 in 2014.
10 Upon information and belief, Defendant Kokich is a citizen of Washington.

11 26. Defendant Randy Wootton (“Wootton”) has been the Company’s CEO since
12 November 2015, and joined the Company as Chief Revenue Officer in March 2015. Upon
13 information and belief, Defendant Wootton is a citizen of California.

14 27. Defendant Monte Zweben (“Zweben”) has been a member of the Company’s
15 Board since March 2010. Zweben also served as the Company’s interim CEO from
16 March 2015 to November 2015. Zweben is a defendant in the Securities Class Action.
17 Zweben received total compensation from Rocket Fuel of \$119,281 in 2013 and \$179,993
18 in 2014. Further, during the Relevant Period, Zweben misappropriated Company non-public
19 information by selling 12,996 personally held shares of Rocket Fuel stock at artificially
20 inflated prices, for proceeds of approximately \$757,081.98. Upon information and belief,
21 Defendant Zweben is a citizen of California.

22 28. Defendants identified in ¶¶ 17-27 are sometimes referred to herein as the
23 “Individual Defendants.”

24 29. Defendants identified in ¶¶ 17 and 20-27 are sometimes referred to herein as
25 the “Director Defendants.”

26 30. Defendants identified in ¶¶ 21 and 24-25 are sometimes referred to herein as
27 the “Audit Committee Defendants.”
28

31. Defendants identified in ¶¶ 17-19, 22-24 and 27 are sometimes referred to herein as the “Insider Selling Defendants.”

32. As directors and/or officers of Rocket Fuel, the Individual Defendants either knew, consciously disregarded, were reckless and grossly negligent in not knowing or should have known the adverse, non-public information about Rocket Fuel’s business, operations, prospects, internal controls, and financial results because of their access to internal corporate documents, conversations and connections with one another as well as other corporate officers and employees, attendance at Board meetings, and committee meetings thereof, as well as reports and other information provided to them in connection therewith. The Individual Defendants either participated in, caused, failed to correct, and/or failed to take action to remedy the harm inflicted upon Rocket Fuel through the issuance of the improper statements disseminated via press releases, SEC filings, and other means to the press, securities analysts, and Rocket Fuel stockholders.

SUBSTANTIVE ALLEGATIONS

A. Background

33. Rocket Fuel is a technology company that has developed a predictive modeling and automated decision-making platform based on AI. The Company’s platform uses AI to determine how to purchase advertising to optimize returns on investment.

34. Rocket Fuel was incorporated as a Delaware corporation in 2008 and is headquartered in Redwood City, California. The Company’s common stock has been listed on the NASDAQ Stock Market since September 2013.

35. The online advertising industry is plagued by automated robotic traffic (“bot traffic” or “fraudulent traffic”) which mimics the actions of human users in order to generate false results. In February 2013, an article in *AdWeek* entitled “The Bots Are Taking Over” reported that bot traffic created costs of \$1-2 billion in display advertising in the fourth quarter of 2012. On September 30, 2013, in an article entitled “Phony Web Traffic Tricks Digital Ads,” the *Wall Street Journal* explained that thousands of dubious websites have appeared on the internet to “take advantage of the simple truth that advertisers pay to be seen”

1 which “creates an incentive for fraudsters to erect sites with phony traffic, collecting
2 payments.”

3 36. Even before Rocket Fuel’s initial public offering (“IPO”) on September 20,
4 2013, the Individual Defendants caused the Company to tout its proprietary AI technology,
5 which it claimed could ensure “both ROI [return on investment] and peace of mind for
6 brands.”

7 37. Leading up to, and during the Relevant Period, Rocket Fuel offered periodic
8 positive assessments of the Company’s technological capabilities, claiming that the quality of
9 Rocket Fuel’s products would create customers. For example, the Individual Defendants
10 caused the Company to represent that: “[O]ur Real-Time Brand Safety Shield provides the
11 highest levels of brand assurance to our clients. At Rocket Fuel, we take a proactive
12 approach, with three layers of defense that block bad sites and pages before we ever serve a
13 single ad on them.”

14 38. The IPO prospectus included a risk factor acknowledging that the Company’s
15 financial success was dependent upon Rocket Fuel’s ability to detect and respond to
16 fraudulent practices, stating: “If we fail to detect fraud or serve our advertisers’
17 advertisements on undesirable websites, our reputation will suffer, which would harm our
18 brand and reputation and negatively impact our business, financial condition and results of
19 operations.”

20 39. Yet despite their awareness of the importance of ensuring that all of Rocket
21 Fuel’s claims were accurate, the Individual Defendants caused the Company to continue to
22 represent that Rocket Fuel’s proprietary technology could eliminate fraudulent bot traffic,
23 even though this was not the case.

24 40. The Company’s misleading statements led to Rocket Fuel’s highly successful
25 IPO, which closed at almost \$60 per share, more than double the offering price of \$29 per
26 share.

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1 **B. The Secondary Offering**

2 41. The IPO agreements included a provision that the Company's directors,
3 officers, and other insiders would not offer or sell "any shares of common stock without the
4 permission of the representatives of the underwriters for a period of 180 days" from the date
5 of the prospectus. According to this agreement, the "lock-up period" would end on March 18,
6 2014.

7 42. However, after the Company's stock continued to rise following the IPO,
8 reaching an interday high of \$71.89 on January 23, 2014, the Company's insiders acted to
9 reap additional profits. By January 27, 2014, the Company's insiders obtained an early
10 release from the lock-up.

11 43. In addition, the Company's insiders took advantage of the high stock price to
12 announce a secondary offering of 5 million shares at a price of \$61 per share (the "Secondary
13 Offering"), and filed a prospectus on January 31, 2014 with the SEC.

14 44. Pursuant to the Secondary Offering, certain Company insiders sold over
15 2.85 million shares of stock between January 30, 2014 and February 4, 2014, at an average
16 price per share of approximately \$59.85, creating hundreds of millions of dollars in profits for
17 themselves.

18 45. The market reacted negatively to the insider stock dump, and the stock price
19 began a slow decline. By March 18, 2014, the date that the lock-up should have expired, the
20 stock price was down to \$50.62. Therefore, by terminating the lock-up ahead of schedule, the
21 Company's insiders pocketed extra profits of more than \$26 million.

22 46. By May 2014, the stock price was down to less than \$30.

23 **C. Improper Statements**

24 47. Following the IPO, the Individual Defendants continued to cause the Company
25 to issue false and misleading statements. On November 6, 2013, the Individual Defendants
26 caused Rocket Fuel to post on its website: "Rocket Fuel undermines fraudulent practices and
27 *makes sure con artists always leave empty handed.* Using the same powerful technology that
28

1 optimizes our clients' campaigns, ***Rocket Fuel is able to identify and eliminate all threats***
2 before serving a single ad."

3 48. On November 13, 2013, the Company filed its quarterly report for the quarter
4 ending September 30, 2013, in which the Individual Defendants caused the Company to
5 report "record revenue" and "strong growth." Following this news, the Company's stock
6 price rose from \$51.01 to \$54.89 in one day.

7 49. The Individual Defendants caused the Company to continue to represent that
8 Rocket Fuel's proprietary technology was superior to the technology provided by competitors,
9 claiming that the Company provided high-quality advertising that could eliminate bot traffic.

10 50. On December 4, 2013, at the NASDAQ OMX Investor Program, Bardwick
11 emphasized the Company's ability to filter bot traffic, stating "***We have proprietary***
12 ***technology about filtering for bots. We also filter for quality.***" Further, Bardwick
13 distinguished Rocket Fuel from other companies, stating that "there'll be a cat-and-mouse
14 game, but I think the advertisers and then ***certain players like us will continue to stay ahead***
15 ***of the people who are trying to make a quick buck.***"

16 51. On January 22, 2014, the Individual Defendants caused Rocket Fuel to issue a
17 press release announcing the Company's results for the fourth quarter of 2013. The press
18 release also provided guidance for the first quarter of 2014 in the range of \$73 million to
19 \$76 million, and revenue in the range of \$420 million to \$435 million for the full year 2014.
20 The press release did not disclose that the Company was failing to identify and filter certain
21 fraudulent bot traffic.

22 52. In response to the misleading statements and omissions made by the Individual
23 Defendants, the Company's stock price continued to rise, reaching an interday high on
24 January 23, 2014 of \$71.89.

25 53. On February 28, 2014, the Individual Defendants caused the Company to file
26 Form 10-K with the SEC, signed by John, Bolstrom, Codd, Ericson, Frankel, Gardner,
27 Kokich, and Zweben. The Form 10-K included disclosures acknowledging that the
28 Company's financial condition and operations would be negatively impacted if Rocket Fuel

1 failed to detect fraudulent bot traffic, but failed to disclose that Rocket Fuel was in fact unable
2 to detect and filter all such traffic.

3 54. On May 26, 2014, *The Financial Times* reported that an investigation by the
4 UK company Telemetry, on behalf of car maker Mercedes-Benz, discovered that ads were
5 “viewed more by fraudster robots than humans.” Telemetry’s investigation found that “ads
6 were inadvertently placed on to fraudulent websites by Rocket Fuel,” and that in a sample of
7 365,000 ad impressions, 57% were viewed not by people, but only by automated bot
8 programs.

9 55. As *The Financial Times* explained, “the findings raise questions about ***Rocket***
10 ***Fuel’s assertions on its website that it ‘makes sure the ‘bad actors’ always leave empty***
11 ***handed.’***”

12 56. The Individual Defendants caused Rocket Fuel to respond by downplaying the
13 report, saying that the findings were only from a small sample and that the numbers might be
14 incorrect, and released a statement stating: “Bots are a real problem, but less so than
15 sensational headlines on top of non-news.” The Company’s response also claimed that:
16 “Rocket Fuel takes an aggressive posture to screen bots out of the ad space... We reject
17 approximately 40% of all ad space daily due to its failure to pass our own bot and brand-
18 safety screens.”

19 57. These statements from the Company, however, directly contradicted the
20 misleading claims on the Rocket Fuel website, which stated that the Company’s technology
21 would ensure that bad actors would “***always*** leave empty handed.”

22 **REASONS STATEMENTS WERE IMPROPER**

23 58. The true facts, which were known or were recklessly disregarded by the
24 Individual Defendants but concealed from the investing public, were as follows:

- 25 (a) Rocket Fuel was unable to adequately identify and eliminate the fraudulent
- 26 “bot traffic” used to artificially increase advertising views;
- 27 (b) the Company knew of the substantial negative impact that this bot traffic was
- 28 having on the market;

(c) by overstating Rocket Fuel's ability to block bot traffic, the Company was incurring material risks to its financial projections and outlook, including from the loss of customers; and

(d) as a result, Rocket Fuel's financial projections and overall Company outlook during the Relevant Period were materially false and misleading at all relevant times.

59. As a result of the Individual Defendants' false and misleading statements and omissions, Rocket Fuel shares traded at artificially inflated prices during the Relevant Period. As detailed below, once the true facts regarding the Company's financial projections and overall Company outlook were revealed to the market, Rocket Fuel stock collapsed a total of \$63.35 per share, closing at a low of just \$3.08 on December 11, 2015, *a loss of over 95%* from the Relevant Period high of \$66.43 on October 18, 2013, and erasing billions of dollars in market capitalization.

THE TRUTH IS REVEALED

60. On August 5, 2014, the Individual Defendants caused Rocket Fuel to issue a press release announcing that the Company had significantly lowered its guidance for 2014 to between \$385 million and \$405 million, sharply lower than the previously announced guidance between \$420 million and \$435 million.

61. The next day, on a conference call with investors, Defendant John stated: "[W]e were surprised by the strength of trends in passing our bookings in June and we now feel our full year guidance should take into account slightly lower sales productivity" based on factors including "buzz this summer about bot traffic and low quality ad space on digital exchanges."

62. The Company continues to suffer for the damages that the Individual Defendants have caused to Rocket Fuel. In addition to the costs of defending the Securities Class Action (and potential damages in that action), the stock price has continued to decline, reaching a new low of \$3.08 on December 11, 2015.

63. As a result of the Individual Defendants' false and misleading statements and omissions, many millions of dollars were erased from the Company's market capitalization, and the Company continues to suffer damages.

INSIDER SELLING

64. Certain Individual Defendants took advantage of the artificially inflated prices to sell their Rocket Fuel shares for substantial proceeds. These Insider Selling Defendants sold over \$150 million of personally held common stock during the Relevant Period, as detailed below. Further, as reported by *InsiderTradingWire* in April 2014, most of these sales took place in the time period between February 3, 2014 and February 7, 2014, and led to a new low in the stock price, reducing the Company's market cap by almost \$1 billion in just six months.

65. Defendant John was a member of the Company's Board, as well as the Company's CEO and Chairman of the Board. John was aware of material, non-public information regarding the Company's inability to identify and eliminate fraudulent bot traffic, and the inaccuracy of Rocket Fuel's disclosures in the Company's press releases and public filings. While in possession of this information, John sold 307,877 personally held shares of Rocket Fuel stock at artificially inflated prices, for proceeds of approximately \$17,935,374.64. John's sales were timed to maximize profits from the Company's then artificially inflated stock price.

66. Defendant Gupta is employed by the Company as Vice President, and was also a co-founder of the Company. Gupta was aware of material, non-public information regarding the Company's inability to identify and eliminate fraudulent bot traffic, and the inaccuracy of Rocket Fuel's disclosures in the Company's press releases and public filings. While in possession of this information, Gupta sold 186,855 personally held shares of Rocket Fuel stock at artificially inflated prices, for proceeds of approximately \$10,885,238. Gupta's sales were timed to maximize profits from the Company's then artificially inflated stock price.

1 67. Defendant Bardwick was the Company's CFO. Bardwick was aware of
2 material, non-public information regarding the Company's inability to identify and eliminate
3 fraudulent bot traffic, and the inaccuracy of Rocket Fuel's disclosures in the Company's press
4 releases and public filings. While in possession of this information, Bardwick sold 17,500
5 personally held shares of Rocket Fuel stock at artificially inflated prices, for proceeds of
6 approximately \$1,019,462.50. Bardwick's sales were timed to maximize profits from the
7 Company's then artificially inflated stock price.

8 68. Defendant Ericson was a member of the Company's Board. Ericson was
9 aware of material, non-public information regarding the Company's inability to identify and
10 eliminate fraudulent bot traffic, and the inaccuracy of Rocket Fuel's disclosures in the
11 Company's press releases and public filings. While in possession of this information, Ericson
12 sold 1,656,776 personally held shares of Rocket Fuel stock at artificially inflated prices, for
13 proceeds of approximately \$101,063,336.00. Ericson's sales were timed to maximize profits
14 from the Company's then artificially inflated stock price.

15 69. Defendant Frankel was the Company's CFO and President, and is currently the
16 Company's Executive Vice President. Frankel was aware of material, non-public information
17 regarding the Company's inability to identify and eliminate fraudulent bot traffic, and the
18 inaccuracy of Rocket Fuel's disclosures in the Company's press releases and public filings.
19 While in possession of this information, Frankel sold 254,323 personally held shares of
20 Rocket Fuel stock at artificially inflated prices, for proceeds of approximately
21 \$14,815,586.37. Frankel's sales were timed to maximize profits from the Company's then
22 artificially inflated stock price.

23 70. Defendant Gardner was a member of the Company's Board. Gardner was
24 aware of material, non-public information regarding the Company's inability to identify and
25 eliminate fraudulent bot traffic, and the inaccuracy of Rocket Fuel's disclosures in the
26 Company's press releases and public filings. While in possession of this information,
27 Gardner sold 407,693 personally held shares of Rocket Fuel stock at artificially inflated
28

1 prices, for proceeds of approximately \$23,750,155.72. Gardner's sales were timed to
2 maximize profits from the Company's then artificially inflated stock price.

3 71. Defendant Zweben was a member of the Company's Board. Zweben was
4 aware of material, non-public information regarding the Company's inability to identify and
5 eliminate fraudulent bot traffic, and the inaccuracy of Rocket Fuel's disclosures in the
6 Company's press releases and public filings. While in possession of this information, Zweben
7 sold 12,996 personally held shares of Rocket Fuel stock at artificially inflated prices, for
8 proceeds of approximately \$757,081.98. Zweben's sales were timed to maximize profits from
9 the Company's then artificially inflated stock price.

10 72. Each of Defendants John, Gupta, Bardwick, Ericson, Frankel, Gardner, and
11 Zweben engaged in insider trading activity at a time when each of them knew of adverse,
12 material, non-public information about the Company's financial outlook that was not being
13 disclosed to the shareholders. On the basis of this non-public information, each of Defendants
14 John, Gupta, Bardwick, Ericson, Frankel, Gardner, and Zweben timed their sales to maximize
15 profit from Rocket Fuel's then artificially inflated stock price. After the irregularities in the
16 Company's financial reporting were revealed, the Company's stock price declined.

17 73. In sum, the Insider Selling Defendants sold over \$150 million worth of stock at
18 artificially inflated prices during the Relevant Period, based on their knowledge of material
19 non-public information about the Company.

20 **FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS**

21 74. By reason of their positions as officers, directors, and/or fiduciaries of Rocket
22 Fuel and because of their ability to control the business and corporate affairs of Rocket Fuel,
23 the Individual Defendants owed and owe the Company and its shareholders fiduciary
24 obligations of trust, loyalty, good faith, and due care, and were and are required to use their
25 utmost ability to control and manage Rocket Fuel in a fair, just, honest, and equitable manner.
26 The Individual Defendants were and are required to act in furtherance of the best interests of
27 Rocket Fuel and its shareholders so as to benefit all shareholders equally and not in
28 furtherance of their personal interest or benefit.

1 75. Each director and officer of the Company owes to Rocket Fuel and its
2 shareholders the fiduciary duty to exercise good faith and diligence in the administration of
3 the affairs of the Company and in the use and preservation of its property and assets, and the
4 highest obligations of fair dealing. In addition, as officers and/or directors of a publicly held
5 company, the Individual Defendants had a duty to promptly disseminate accurate and truthful
6 information with regard to the Company's operations, performance, management, projections,
7 and forecasts so that the market price of the Company's stock would be based on truthful and
8 accurate information.

9 **CONTROL, ACCESS, AND AUTHORITY**

10 76. The Individual Defendants, because of their positions of control and authority
11 as directors and/or officers of Rocket Fuel, were able to and did, directly and/or indirectly,
12 exercise control over the wrongful acts complained of herein, as well as the contents of the
13 various public statements issued by Rocket Fuel.

14 77. Because of their advisory, executive, managerial, and directorial positions with
15 Rocket Fuel, each of the Individual Defendants had access to adverse, non-public information
16 about the financial condition, operations, and improper representations of Rocket Fuel.

17 78. At all times relevant hereto, each of the Individual Defendants was the agent of
18 each of the other Individual Defendants and of Rocket Fuel, and was at all times acting within
19 the course and scope of such agency.

20 **REASONABLE AND PRUDENT SUPERVISION**

21 79. To discharge their duties, the officers and directors of Rocket Fuel were
22 required to exercise reasonable and prudent supervision over the management, policies,
23 practices and controls of the financial affairs of the Company. By virtue of such duties, the
24 officers and directors of Rocket Fuel were required to, among other things:

- 25 (a) ensure that the Company complied with its legal obligations and requirements,
26 including acting only within the scope of its legal authority and disseminating
27 truthful and accurate statements to the investing public;
28 (b) conduct the affairs of the Company in an efficient, business-like manner so as

to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(c) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time, including making accurate statements about the Company's financial results;

(d) remain informed as to how Rocket Fuel conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with securities laws; and

(e) ensure that Rocket Fuel was operated in a diligent, honest, and prudent manner in compliance with all applicable laws, rules, and regulations.

BREACHES OF DUTIES

80. Each Individual Defendant, by virtue of his or her position as a director and/or officer, owed to Rocket Fuel and to its shareholders the fiduciary duty of loyalty and good faith and the exercise of due care and diligence in the management and administration of the affairs of Rocket Fuel, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Rocket Fuel, the absence of good faith on their part, and a reckless disregard for their duties to Rocket Fuel and its shareholders that the Individual Defendants were aware or should have been aware posed a risk of serious injury to Rocket Fuel.

81. The Individual Defendants each breached their duty of loyalty and good faith by allowing Defendants to cause, or by themselves causing, the Company to make false and/or misleading statements regarding the Company's current and future business prospects and outlook. In addition, as a result of the Individual Defendants' illegal actions and course of conduct, the Company is now the subject of a class action lawsuit that alleges violations of

1 the federal securities laws. As a result, Rocket Fuel has expended, and will continue to
2 expend, significant sums of money to rectify the Individual Defendants' wrongdoing.

3 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

4 82. In committing the wrongful acts alleged herein, the Individual Defendants have
5 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert
6 with and conspired with one another in furtherance of their wrongdoing. The Individual
7 Defendants further aided and abetted and/or assisted each other in breaching their respective
8 duties.

9 83. During all times relevant hereto, the Individual Defendants collectively and
10 individually initiated a course of conduct that was designed to mislead shareholders into
11 believing the Company's financial projections and overall Company outlook. In furtherance
12 of this plan, conspiracy, and course of conduct, the Individual Defendants collectively and
13 individually took the actions set forth herein.

14 84. The purpose and effect of the Individual Defendants' conspiracy, common
15 enterprise, and/or common course of conduct was, among other things, to: (a) disguise the
16 Individual Defendants' violations of law, including breaches of fiduciary duty and unjust
17 enrichment; and (b) disguise and misrepresent the Company's current and future business
18 prospects.

19 85. The Individual Defendants accomplished their conspiracy, common enterprise,
20 and/or common course of conduct by causing the Company to purposefully, recklessly, or
21 negligently release improper statements. Because the actions described herein occurred under
22 the authority of the Board, each of the Director Defendants was a direct, necessary, and
23 substantial participant in the conspiracy, common enterprise, and/or common course of
24 conduct complained of herein.

25 86. Each of the Individual Defendants aided and abetted and rendered substantial
26 assistance in the wrongs complained of herein. In taking such actions to substantially assist
27 the commissions of the wrongdoing complained of herein, each Individual Defendant acted
28 with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that

wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

DAMAGES TO ROCKET FUEL

87. As a result of the Individual Defendants' wrongful conduct, Rocket Fuel disseminated false and misleading statements. The improper statements have devastated Rocket Fuel's credibility. Additionally, Rocket Fuel is now the subject of the Securities Class Action. The Company will face substantial costs in connection with an investigation and the lawsuit.

88. As a direct and proximate result of the Individual Defendants' actions as alleged above, Rocket Fuel's market capitalization has been substantially damaged.

89. Further, as a direct and proximate result of the Individual Defendants' conduct, Rocket Fuel has expended and will continue to expend significant sums of money. Such expenditures include, but are not limited to:

- (a) costs incurred in investigating and defending Rocket Fuel and certain officers in a class action lawsuit, plus potentially tens of millions of dollars — or more — in settlement or to satisfy an adverse judgment;
- (b) costs incurred from compensation and benefits paid to the Individual Defendants, which compensation was based at least in part on Rocket Fuel's artificially-inflated stock price and inflated revenues; and
- (c) costs incurred from the loss of the Company's customers' confidence in Rocket Fuel services.

90. Moreover, these actions have irreparably damaged Rocket Fuel's corporate image and goodwill. For at least the foreseeable future, Rocket Fuel will suffer from what is known as the "liar's discount," a term applied to the stocks of companies who have been implicated in illegal behavior and have misled the investing public, such that Rocket Fuel's ability to raise equity capital or debt on favorable terms in the future is now impaired.

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DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

91. Plaintiff brings this action derivatively in the right and for the benefit of Rocket Fuel to redress injuries suffered, and to be suffered, by Rocket Fuel as a direct result of the Individual Defendants' breaches of fiduciary duty, corporate waste, and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. Rocket Fuel is named as a nominal defendant solely in a derivative capacity.

92. Plaintiff will adequately and fairly represent the interests of Rocket Fuel in enforcing and prosecuting its rights.

93. Plaintiff was a shareholder of Rocket Fuel common stock at the time of the wrongdoing of which Plaintiff complains and has been a shareholder continuously throughout the Relevant Period.

94. Plaintiff did not make a pre-suit demand on the Board to pursue this action, because such a demand would have been a futile and wasteful act.

95. At the time this action was commenced, the Board of Rocket Fuel consisted of the following eight (8) directors: Defendants Bostrom, Codd, Ericson, Frankel, Kokich, Wootton, and Zweben, and non-Defendant John Lewis.

A. Demand is Futile as to All Director Defendants Because the Director Defendants Face a Substantial Likelihood of Liability

96. Each of the Director Defendants faces a substantial likelihood of liability for their individual misconduct. The Director Defendants were directors throughout the Relevant Period, and as such had a fiduciary duty to ensure that the Company's SEC filings, press releases, and other public statements and presentations on behalf of the Company concerning its business, operations, prospects, internal controls, and financial statements were accurate.

97. Moreover, the Director Defendants, as directors (and, in some cases, also as Audit Committee members) owed a duty to, in good faith and with due diligence, exercise reasonable inquiry, oversight, and supervision to ensure that the Company's internal controls and/or internal auditing and accounting controls over financial reporting were sufficiently robust and effective (and/or were being implemented effectively), and to ensure that the Audit

1 Committee's duties were being discharged in good faith and with the required diligence and
2 due care. Instead, they knowingly and/or with reckless disregard reviewed, authorized and/or
3 caused the publication of materially false and misleading statements throughout the Relevant
4 Period that caused the Company's stock to trade at artificially inflated prices.

5 98. The Director Defendants also wasted corporate assets by paying improper
6 compensation, bonuses, and severance to certain of the Company's executive officers and
7 directors. The handsome remunerations paid to wayward fiduciaries who proceeded to breach
8 their fiduciary duties to the Company was improper and unnecessary, and no person of
9 ordinary, sound business judgment would view this exchange of consideration for services
10 rendered as fair or reasonable.

11 99. The Director Defendants' making or authorization of false and misleading
12 statements throughout the Relevant Period, failure to timely correct such statements, failure to
13 take necessary and appropriate steps to ensure that the Company's internal controls or internal
14 auditing and accounting controls were sufficiently robust and effective (and/or were being
15 implemented effectively), failure to take necessary and appropriate steps to ensure that the
16 Audit Committee's duties were being discharged in good faith and with the required
17 diligence, and/or acts of corporate waste and abuse of control constitute breaches of fiduciary
18 duties, for which the Director Defendants face a substantial likelihood of liability.

19 100. If the Director Defendants were to bring a suit on behalf of Rocket Fuel to
20 recover damages sustained as a result of this misconduct, they would expose themselves to
21 significant liability. This is something they will not do. For this reason, demand is futile.

22 **B. Demand is Futile as to the Audit Committee Defendants**

23 101. Audit Committee Defendants Codd, Gardner, and Kokich were responsible for,
24 among other things, reviewing and approving quarterly and annual financial statements and
25 earnings press releases, overseeing Rocket Fuel's internal controls over financial reporting,
26 and discharging their other duties described herein. Despite these duties, Codd, Gardner, and
27 Kokich knowingly or recklessly reviewed and approved, or failed to exercise due diligence
28 and reasonable care in reviewing and preventing the dissemination of false and/or materially

misleading earnings press releases and earnings guidance and failed in their specific duties to ensure that the Company's internal controls over financial reporting were sufficient and that statements made by the Company regarding its business, operations, prospects, internal controls, and financial statements were accurate. Accordingly, the Audit Committee Defendants face a sufficiently substantial likelihood of liability for breach of their fiduciary duties of loyalty and good faith. Any demand upon the Audit Committee Defendants therefore is futile.

C. Demand is Futile Based on Insider Selling

102. Demand is futile as to Ericson, Frankel, and Zweben because, as alleged herein, each engaged in insider trading activity at a time when each of them knew of adverse, material, non-public information about the Company's financial outlook that was not being disclosed to the shareholders.

103. On the basis of this non-public information, each of Ericson, Frankel, and Zweben timed their sales to maximize profit from Rocket Fuel's then artificially inflated stock price, the value of which plummeted after the irregularities in the Company's financial reporting were revealed.

104. As a result of these illicit insider sales, defendants Ericson, Frankel, and Zweben each received direct financial benefits not shared with Rocket Fuel shareholders, and are, therefore, each directly interested in a demand. Further, defendants Ericson, Frankel, and Zweben each are interested in a demand because they face a substantial likelihood of liability for their breaches of fiduciary duties of loyalty and good faith based on their challenged insider sales. As such, demand upon Ericson, Frankel, and Zweben is futile.

D. Demand is Futile as to Wootton, Frankel, and Zweben for Additional Reasons

105. In addition to the reasons discussed herein as to why demand is futile as to all Director Defendants, demand is futile as to Wootton, Frankel, and Zweben because there is reason to doubt that Wootton, Frankel, and Zweben are independent directors.

106. Specifically, Wootton's principle professional occupation is his employment with Rocket Fuel as its CEO and Chairman, and thus, is a non-independent director. In these

1 roles, Wootton is paid an annual base salary of \$430,000, is eligible for a bonus of 100% of
2 his base salary under an executive incentive compensation plan and a grant of stock option to
3 purchase 500,000 shares of stock. As leader of the Company responsible for fraud in the
4 making of false and misleading statements of material fact as alleged herein, Wootton is not
5 disinterested and is certainly not independent. He is beholden to the Company's Board, the
6 majority of which is liable for breach of fiduciary duties, and which is thus not disinterested,
7 and which exert their controlling ownership over the Company. Defendant Wootton is thus
8 not disinterested or independent, faces a substantial likelihood of liability, and demand upon
9 him is futile and, therefore, excused.

10 107. Further, because of his roles as Co-Founder and President of the Company,
11 Frankel is not an independent director. In fact, the Company's most recent Proxy filed with
12 the SEC and disseminated to shareholders on April 27, 2015, implicitly acknowledges as
13 much by not listing Frankel as an independent director. Additionally, Defendant Frankel's
14 annual compensation (including salary and stock awards) was \$2,923,397 for 2014, and
15 \$1,498,988 for 2013. Defendant Frankel beneficially owns 2,655,232 shares or 6.27% of the
16 Company's outstanding stock; he thus has an interest in keeping the Company's stock price as
17 high as possible. Further, the most plausible inference is that the wrongdoing alleged herein
18 was widespread and systemic at the Company, and Frankel knowingly engaged in, facilitated,
19 concealed, and failed to disclose the wrongdoing, or recklessly turned a blind eye to it. As
20 such, for these additional reasons, Frankel is not disinterested or independent, and demand
21 upon him is futile and, therefore, excused.

22 108. Defendant Zweben is Executive Chairman of the Company and the Board.
23 Zweben received from the Company, for interim services as chief executive in 2015, two
24 bonus payments of \$200,000 as well as stock options. For his services as a member of the
25 Board of the Company, Zweben also earned compensation of \$179,993 in fees and stock
26 awards for the year ended December 31, 2014. He is beholden to the Company's Board, the
27 majority of which is liable for breach of fiduciary duties, and which is thus not disinterested,
28 and which exert their controlling ownership over the Company. As Executive Chairman of

the Company, Defendant Zweben breached his fiduciary duties. Further, the most plausible inference is that the wrongdoing alleged herein was widespread and systemic at the Company, and Zweben knowingly engaged in, facilitated, concealed, and failed to disclose the wrongdoing, or recklessly turned a blind eye to it. Zweben is additionally named as a defendant in the federal securities class action lawsuit. Defendant Zweben is thus not disinterested or independent, faces a substantial likelihood of liability, and demand upon him is futile and, therefore, excused.

E. Demand is Futile for Additional Reasons

109. Rocket Fuel’s Board has already demonstrated that it cannot independently and disinterestedly consider a pre-suit demand to bring the claims set forth herein. Despite the wrongdoing of Defendant John, the Board has seen fit to bestow *benefits* for his departure from the Company, including a substantial severance package.

110. If Rocket Fuel’s current officers and directors are protected against personal liability for their breaches of fiduciary duties alleged in this Complaint by Directors and Officers Liability Insurance (“D&O Insurance”), they caused the Company to purchase that insurance for their protection with corporate funds, *i.e.*, monies belonging to the shareholders. However, Plaintiff is informed and believes that the D&O Insurance policies covering the Director Defendants in this case contain provisions that eliminate coverage for any action brought directly by Rocket Fuel against the Director Defendants, known as the “insured versus insured exclusion.” As a result, if the Director Defendants were to sue themselves or certain of the officers of Rocket Fuel, there would be no D&O Insurance protection, and thus, this is a further reason why they will not bring such a suit. On the other hand, if the suit is brought derivatively, as this action is brought, such insurance coverage exists and will provide a basis for the Company to effectuate recovery. Therefore, the Director Defendants cannot be expected to file the claims asserted in this derivative lawsuit because such claims would not be covered under the Company’s D&O Insurance policy.

111. Under the factual circumstances described herein, the Director Defendants are more interested in protecting themselves than they are in protecting Rocket Fuel by

1 prosecuting this action. Therefore, demand on Rocket Fuel and its Board is futile and is
2 excused.

3 112. Rocket Fuel has been and will continue to be exposed to significant losses due
4 to the Director Defendants' wrongdoing. Yet, the Director Defendants have not filed any
5 lawsuits against themselves or others who were responsible for the wrongful conduct. Thus,
6 the Director Defendants are breaching their fiduciary duties to the Company and face a
7 sufficiently substantial likelihood of liability for their breaches, rendering any demand upon
8 them futile.

9 113. Thus, demand is futile as to Director Defendants Bostrom, Codd, Ericson,
10 Frankel, Kokich, Wootton, and Zweben.

11 **COUNT I**

12 **Against the Individual Defendants for Breaches of Fiduciary Duties**

13 114. Plaintiff incorporates by reference and realleges each and every allegation
14 contained above, as though fully set forth herein.

15 115. The Individual Defendants owed and owe Rocket Fuel fiduciary obligations.
16 By reason of their fiduciary relationships, the Individual Defendants owed and owe Rocket
17 Fuel the highest obligation of good faith, fair dealing, loyalty, due care, reasonable inquiry,
18 oversight and supervision.

19 116. The Individual Defendants violated and breached their fiduciary duties of good
20 faith, fair dealing, loyalty, due care, reasonable inquiry, oversight and supervision.

21 117. The Individual Defendants each knowingly, recklessly or negligently approved
22 the issuance of false statements that misrepresented and failed to disclose material
23 information concerning the Company. These actions could not have been a good faith
24 exercise of prudent business judgment to protect and promote the Company's corporate
25 interests.

26 118. As executive officers of Rocket Fuel and members of the Rocket Fuel Board,
27 the Individual Defendants were directly responsible for authorizing or permitting the
28 authorization of, or failing to monitor, the practices which resulted in violations of the law as

1 alleged herein. Each of them had knowledge of and actively participated in and/or approved
2 of or acquiesced in the wrongdoings alleged herein or abdicated his/her responsibilities with
3 respect to these wrongdoings. The alleged acts of wrongdoing have subjected Rocket Fuel to
4 unreasonable risks of loss and expenses.

5 119. As a direct and proximate result of the Individual Defendants' failure to
6 perform their fiduciary obligations, Rocket Fuel has sustained significant damages. As a
7 result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

8 120. By reason of the foregoing, Rocket Fuel was damaged.

9 121. Plaintiff, on behalf of Rocket Fuel, has no adequate remedy at law.

10 **COUNT II**

11 **Against the Individual Defendants for Unjust Enrichment**

12 122. Plaintiff incorporates by reference and realleges each and every allegation
13 contained above, as though fully set forth herein.

14 123. By their wrongful acts and omissions, the Individual Defendants were unjustly
15 enriched at the expense of and to the detriment of Rocket Fuel.

16 124. The Individual Defendants were unjustly enriched as a result of the
17 compensation they received while breaching their fiduciary duties owed to Rocket Fuel.

18 125. By reason of the foregoing, Rocket Fuel was damaged.

19 126. Plaintiff, as a shareholder and representative of Rocket Fuel, seeks restitution
20 from the Individual Defendants and seeks an order from this Court disgorging all profits,
21 benefits, and other compensation obtained by the Individual Defendants from their wrongful
22 conduct and fiduciary breaches.

23 127. Plaintiff, on behalf of Rocket Fuel, has no adequate remedy at law.

24 **COUNT III**

25 **Against the Individual Defendants for Corporate Waste**

26 128. Plaintiff incorporates by reference and realleges each and every allegation set
27 forth above, as though fully set forth herein.

129. The wrongful conduct alleged regarding the issuance of false and misleading statements, was continuous, connected, and ongoing throughout the Relevant Period. It resulted in continuous, connected, and ongoing harm to the Company.

130. As a result of the misconduct described above, the Individual Defendants wasted corporate assets by, *inter alia*: (i) paying excessive compensation, bonuses, and termination payments to certain of its executive officers; (ii) awarding self-interested stock options to certain officers and directors; and (iii) incurring potentially millions of dollars of legal liability and/or legal costs to defend Defendants' unlawful actions, including in the Securities Class Action.

131. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

132. By reason of the foregoing, Rocket Fuel was damaged.

133. Plaintiff, on behalf of Rocket Fuel, has no adequate remedy at law.

COUNT IV

Against the Individual Defendants for Aiding and Abetting Fiduciary Violations

134. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

135. The wrongful conduct alleged herein was continuous, connected, and on-going since at least October 2013. The Individual Defendants' misconduct resulted in continuous, connected, and on-going harm to the Company.

136. The Individual Defendants had the power and/or ability to, and did, directly or indirectly control or influence the Company's general affairs, including the content of public statements disseminated by Rocket Fuel and had the power and/or ability, directly or indirectly, to control or influence one another.

137. Each Individual Defendant is jointly and severally liable to the same extent as any other Defendant is liable for breaches of fiduciary duties as set forth herein or violations of any other laws.

138. By reason of the foregoing, Rocket Fuel was damaged.

139. Plaintiff, on behalf of Rocket Fuel, has no adequate remedy at law.

COUNT V

**Against the Insider Selling Defendants for Breach of Fiduciary Duty
for Insider Selling and Misappropriation of Information**

140. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

141. At the time the Insider Selling Defendants sold their Rocket Fuel stock, they knew the information described above, and sold Rocket Fuel stock on the basis of such information.

142. The information described above was proprietary non-public information concerning the Company's financial condition and future business prospects. It was a proprietary asset belonging to the Company, which the Insider Selling Defendants misappropriated to their own benefit when they sold Rocket Fuel stock.

143. The Insider Selling Defendants' sales of stock while in possession and control of this material, adverse, non-public information was a breach of their fiduciary duties of loyalty and good faith.

144. Since the use of the Company's proprietary information for their own gain constitutes a breach of the Insider Selling Defendants' fiduciary duties, the Company is entitled to the imposition of a constructive trust on any profits the Insider Selling Defendants obtained thereby.

145. Plaintiff, on behalf of Rocket Fuel, has no adequate remedy at law.

COUNT VI

Against the Insider Selling Defendants for Violation of Cal. Corp. Code § 25402

146. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

147. At the time the Insider Selling Defendants sold their Rocket Fuel common stock, they were officers and/or directors of Rocket Fuel, positions which gave them access,

1 directly or indirectly, to material information about Rocket Fuel not generally available to the
2 public.

3 148. The Insider Selling Defendants knew these facts were not intended to be
4 available to the public. Had such information been generally available to the public, it would
5 have significantly reduced the market price of Rocket Fuel common stock.

6 149. The Insider Selling Defendants had knowledge of material, adverse, non-public
7 information and sold their Rocket Fuel common stock in violation of California Corporations
8 Code § 25402.

9 150. The Insider Selling Defendants are liable for damages in an amount up to three
10 times the difference between the price at which the security was sold and the market value
11 which the security would have had at the time of the sale if the information known to the
12 Insider Selling Defendants had been publicly disseminated prior to that time and a reasonable
13 time had elapsed for the market to absorb the information—pursuant to California
14 Corporations Code § 25502.5.

15 151. On information and belief, Plaintiff alleges that Rocket Fuel has total assets in
16 excess of one million dollars and has a class of equity security held of record by 500 or more
17 persons.

18 152. The Insider Selling Defendants are also liable for reasonable attorney's fees
19 and costs under California Corporations Code § 25502.5.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff demands judgment in the Company's favor against all
22 Defendants as follows:

23 A. Declaring that Plaintiff may maintain this action on behalf of Rocket Fuel and
24 that Plaintiff is an adequate representative of the Company;

25 B. Declaring that Defendants have breached their fiduciary duties to Rocket Fuel;

26 C. Determining and awarding to Rocket Fuel the amount of damages sustained by
27 the Company as a result of the violations set forth above from each of the Defendants, jointly
28 and severally, together with interest thereon;

1 D. Directing Rocket Fuel to take all necessary actions to reform and improve its
 2 corporate governance and internal procedures to comply with applicable laws and to protect
 3 Rocket Fuel and its shareholders from a repeat of the damaging events described herein,
 4 including, but not limited to, putting forward for shareholder vote resolutions for amendments
 5 to the Company's By-Laws or Articles of Incorporation and taking such other action as may
 6 be necessary to place before shareholders for a vote the following Corporate Governance
 7 Policies:

- 8 ▪ a proposal to strengthen the Board's supervision of operations and compliance
 9 with applicable state and federal laws and regulations;
- 10 ▪ a proposal to develop and implement procedures for greater shareholder input
 11 into the policies and guidelines of the Board;
- 12 ▪ a proposal to strengthen the Company's internal reporting and financial
 13 disclosure controls;
- 14 ▪ a proposal to strengthen the Company's insider trading controls;
- 15 ▪ a provision to permit the shareholders of Rocket Fuel to nominate at least two
 16 candidates for election to the Board;
- 17 ▪ a proposal to ensure the accuracy of the qualifications of Rocket Fuel's
 18 directors, executives and other employees;
- 19 ▪ a proposal to strengthen the Company's procedures for the receipt, retention
 20 and treatment of complaints received by the Company regarding internal
 21 controls; and
- 22 ▪ a provision to appropriately test and then strengthen the Company's internal
 23 operational control functions.

24 E. Awarding to Rocket Fuel restitution from the Individual Defendants, and each
 25 of them, and ordering disgorgement of all profits, benefits and other compensation obtained
 26 by the Individual Defendants;

27 F. Awarding to Plaintiff the costs and disbursements of the action, including
 28 reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

1 G. Granting such other and further equitable relief as the Court deems just and
2 proper.

3 **JURY DEMAND**

4 153. Plaintiff demands a trial by jury.

5
6 Dated: February 4, 2016

JOHNSON & WEAVER, LLP
FRANK J. JOHNSON
SHAWN E FIELDS

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8
9 By: s/Frank J. Johnson


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Dated: February 3, 2016

By:  DocuSigned by:

DocuSigned by:

William Pack